

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RAUL LUEVANO,

Plaintiff,

v.

HOWARD CHIEN,

Defendant.

Case No.: C 08-05784 RS (PVT)

**ORDER DENYING PLAINTIFF RAUL
LUEVANO'S MOTION FOR
SANCTIONS**

[Docket No. 18]

Pursuant to Rule 37, plaintiff Raul Luevano moves for sanctions. Defendant Howard Chien opposes the motion. Pursuant to Civ. L.R. 7-1(b), the motion is submitted and the hearing scheduled to be held on July 13, 2010 is vacated. Having reviewed the papers and considered the arguments of counsel,

IT IS HEREBY ORDERED that plaintiff Luevano's motion for sanctions is denied.¹

Plaintiff Luevano moves for sanctions on the grounds that the discovery sought was not produced until after he moved to compel. Mot. at 1. Specifically, he had sought production of tax returns to determine whether defendant met the gross income requirements under the Fair Labor Standards Act. *Id.* Defendant Chien first objected to the discovery sought on the grounds, *inter*

¹ The holding of this court is limited to the facts and particular circumstances underlying the present motion.

1 *alia*, of privacy and privilege but he later relented after the parties met and conferred. Mot. at 2.
 2 Plaintiff Luevano complains that defendant Chien waited 7 days after he had agreed to produce the
 3 discovery. He moves for an award totaling \$1,800. Mot. at 3.

4 Defendant Chien states that he produced tax returns for years 2007-2009 as soon as he
 5 received them. Opp. at 3-4. "Defendant explained that he had only recently received copies of his
 6 2007, 2008, and 2009 tax returns from his tax preparer, which caused the delay." *Id.* He further
 7 states that plaintiff waited more than ten months after his discovery responses were served before
 8 making any efforts to challenge the objection. Opp. at 3.

9 Rule 37(a)(5)(A) states:

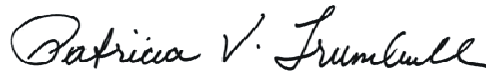
10 If the motion is granted (or disclosure or discovery is provided after filing). If the
 11 motion is granted – or if the disclosure or requested discovery is provided after the
 12 motion was filed – the court must, after giving an opportunity to be heard, require the
 13 party or deponent whose conduct necessitated the motion, the party or attorney
 advising that conduct, or both to pay the movant's reasonable expenses incurred in
 making the motion, including the attorney's fees. But the court must not order this
 payment if:

- 14 (i) the movant filed the motion before attempting in good faith to obtain the disclosure or
 15 discovery without court action;
- 16 (ii) the opposing party's nondisclosure, response, or objection was substantially justified;
 or
- 17 (iii) other circumstances make an award of expenses unjust.

18 Fed. R. Civ. P. 37(a)(5)(A).

19 Following the meet and confer by the parties, defendant Chien agreed to produce the
 20 discovery sought. Because of delays in obtaining the tax returns from the tax preparer, he was not
 21 able to produce them until May 10, 2010 (the same day the motion to compel was filed). Therefore,
 22 the court finds that the defendant's response was substantially justified. Accordingly, plaintiff's
 23 motion for sanctions is denied.

24 Dated: July 1, 2010

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 26 PATRICIA V. TRUMBULL
 27 United States Magistrate Judge
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